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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 120

ERNEST NEWTON KALB AND MARGARET KALB,
HIS WIFE,

Appellants,

vs.

HENRY FEUERSTEIN AND HELEN FEUERSTEIN,
HIS WIFE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

J. ARTHUR MORAN,
Counsel for Appellees.

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vs. *Appellants,*

HENRY FEUERSTEIN AND HELEN FEUERSTEIN,
HIS WIFE,

Appellees.

JOINT STATEMENT OPPOSING JURISDICTION.

For the sake of brevity, no additional statement of facts is here made but reference is made to the opinions of the State court attached as Exhibits A and B to the Statement as to Jurisdiction in Case No. 375 of the October Term, 1938, and Case No. 374 of the October Term, 1938, they being companion cases.

The appellees severally contend that there is no substantial Federal question presented by this appeal for the following reasons:

1. The stay provided by Section 75(n) of the Bankruptcy Act as amended August 28, 1935, 49 Statutes at Large 943, Chapter 792, is a *judicial* stay and not an automatic or

statutory one. The statute is an assertion of jurisdiction in the Federal court and the filing of a petition only serves to create rights which are grounds for a judicial stay if properly asserted. To hold that mere filing of the petition divested the State court of jurisdiction in the foreclosure case would throw the whole matter of titles into inextricable confusion. This rule is too well settled for reasonable argument.

2. In Wisconsin, the foreclosure sale is not had until the expiration of one year from the date of the foreclosure judgment. Sec. 278.10, Wisconsin Statutes.

Sec. 278.13, Wisconsin Statutes, provides in part:

> "The mortgagor • • • may redeem the mortgaged premises at any time before the sale • • •."

To hold that the State court lost jurisdiction in the foreclosure proceedings by the filing of the petition after more than one year from the date of the foreclosure decree when the period of redemption had expired or at least run for more than one year (and in this case more than two years), would be an application of the so-called Second Frazier-Lemke Act which would make it unconstitutional as it has been definitely decided that Congress has no power to extend the period of redemption after the time had begun to run.

3. The complaint affirmatively demonstrates debtor appellant's failure to pursue the proper remedy by appealing from the judgment of the State court confirming the foreclosure sale, and by debtor's discontinuance of the bankruptcy proceedings and his failure to prosecute such proceedings to a conclusion.

4. The Full Faith and Credit Clause of the Federal Constitution would be violated if the Court refused to recog-

nize the validity of the foreclosure sale and confirmation as it appears that the foreclosure decree was entered April 21, 1933, and the filing of debtor's petition under Sec. 75 of the Bankruptcy Act as amended August 28, 1935, was not until September 6, 1935, and the period of redemption had already expired or at least had begun to run more than two years prior thereto.

5. Filing of the petition under the Second Frazier-Lemke Act appears to have been solely for the purpose of delay and harassment and debtor appellant having failed to prosecute the proceedings instituted by him in the Federal court, four years having now elapsed since the date of the reinstatement of his amended petition.

Dated July 5, 1939.

J. ARTHUR MORAN,
Attorney for Appellees.

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Appellees.

Upon the foregoing Joint Statement Opposing Jurisdiction, and upon the records and files herein, the appellees by their attorney, move the Court for an order dismissing the appeal for want of a substantial Federal question, and, in the alternative, for an order affirming the judgment of the Supreme Court of Wisconsin for the reason that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Dated July 5, 1939.

J. ARTHUR MORAN,
Attorney for Appellees.